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Designated Driver-less Cars? Why Current Georgia Law Supports Liability for Intoxicated Drivers of Autonomous Vehicles

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Cover Page Footnote

J.D. Candidate, 2023, University of Georgia School of Law; B.A., 2020 College of Charleston. I would like to express my sincere gratitude to Professor Julian Cook for his support and guidance in writing this note. I would also like to thank the editorial board of the Georgia Law Review for their hard work. Finally, I would like to thank my wife, Olivia, for her endless support and patience throughout the process of writing and editing this note.

DESIGNATED DRIVER-LESS CARS? WHY CURRENT GEORGIA LAW SUPPORTS LIABILITY FOR INTOXICATED DRIVERS OF AUTONOMOUS VEHICLES

*Jesse L. Keeffe**

In recent years, autonomous vehicles (AVs), once the province of science fiction, have become an increasingly common sight on American roads. This new technology raises a host of novel legal questions, one of which is how driving under the influence (DUI) law should apply to AVs. Georgia has authorized the use of AVs, and some lawmakers who voted in favor of that authorization did so because, at least in part, they felt AVs could reduce the number of DUIs in Georgia. This Note argues, however, that Georgia DUI law as written and interpreted by the Georgia courts would apply to hold the operator of any currently existing AV criminally responsible for DUI if they operated the AV while under the influence of drugs or alcohol. Therefore, if authorizing AV use intended to alter the scheme of Georgia DUI law for these vehicles, then amendments to Georgia's DUI statutes or a new statutory DUI scheme specifically applicable to AVs must be adopted to reflect that intent.

* J.D. Candidate, 2023, University of Georgia School of Law; B.A., 2020 College of Charleston. I would like to express my sincere gratitude to Professor Julian Cook for his support and guidance in writing this note. I would also like to thank the editorial board of the *Georgia Law Review* for their hard work. Finally, I would like to thank my wife, Olivia, for her endless support and patience throughout the process of writing and editing this note.

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I. INTRODUCTION

Imagine you are running late to the airport, so you call a taxi. Your car pulls up and you hop in. You begin to say hello to your driver and notice there is no one else in the car. And yet the car starts moving towards your destination on its own. While this may seem like the start of a science fiction story, it is a reality today in the suburbs of Phoenix, Arizona.¹ In the suburban areas surrounding Phoenix, Waymo, a business unit of Alphabet, operates the first fully autonomous taxi service without a driver.² The vehicles will pick up and deliver someone who requests a taxi ride, with technicians who can remotely take over the vehicle and roadside crews available to arrive in person to take control of and navigate the vehicle if it encounters any road environment or situation that its programming finds difficult to navigate.³ Phoenix offers a glimpse into the rapidly approaching future in which autonomous vehicles (AV) become commonplace. While such fully autonomous vehicles today are rare and have only been deployed in particular situations,⁴ there are over 1,400 AVs on American streets today that have some level of autonomous driving capability.⁵

Perhaps the most familiar of these AVs with some level of autonomous driving capability are Teslas, which are becoming commonplace in the U.S. and around the world.⁶ With AVs

¹ See Cade Metz, *The Costly Pursuit of Self-Driving Cars Continues On. And On. And On.*, N.Y. TIMES (Sept. 15, 2021), <https://www.nytimes.com/2021/05/24/technology/self-driving-cars-wait.html> (noting that Waymo has begun operating the world's first fully automated taxi service in the suburban areas around Phoenix, Arizona, though the vehicles are supported by remote technicians and roadside crews who can help the vehicle navigate any road environment its programming would find difficult to navigate, either remotely or in person).

² See *id.* ("In October, Waymo . . . started the world's first 'fully autonomous' taxi service.")

³ See *id.* (describing the roadside technicians' role).

⁴ See *id.* (noting that the Waymo fully autonomous vans are not yet reliable enough to be deployed outside of areas like suburban Phoenix with wide streets, few pedestrians, and limited rain and snow).

⁵ See Alex Kopestinsky, *25 Astonishing Self-Driving Car Statistics for 2021*, POLICYADVICE (Mar. 5, 2022), <https://policyadvice.net/insurance/insights/self-driving-car-statistics/> (indicating that "there are over 1,400 self-driving cars in the U.S.," including Teslas with autopilot capabilities that are more limited than fully autonomous AV capabilities.)

⁶ See Sebastian Blanco, *Tesla Delivered Almost a Million EVs Worldwide in 2021*, CAR & DRIVER (Jan. 3, 2022), <https://www.caranddriver.com/news/a38657616/tesla-million-evs-worldwide-2021/> (noting that in 2021, Tesla delivered nearly a million vehicles worldwide).

proliferating across the globe, legal questions raised by these vehicles are rapidly becoming as ubiquitous as the vehicles themselves.

For that reason, it is key that the areas of ambiguities in the law created by AVs be resolved as soon as possible because these vehicles are already leading to legal and safety issues, as demonstrated by a lawsuit alleging the Tesla in autopilot mode struck and killed a pedestrian.⁷ States like California are responding by reconsidering whether to allow Tesla vehicles with level two self-driving capabilities to operate on their roads absent further regulation.⁸ Allowing the use of such vehicles can create legal and safety issues such as liability for injuries, among other things⁹

One legal issue presented by the introduction of AVs is whether an intoxicated person who operates an AV could be found guilty of driving under the influence (DUI).¹⁰ Georgia is one of several states that has authorized the use of AVs.¹¹ Doing so raises several questions: How should Georgia laws apply DUI criminal responsibility (DUI liability) to one who operates an AV? Should

and, although Tesla does disaggregate delivery data by country, they sold approximately 90,000 of one model of Tesla a year, on average, in the U.S. from 2017–2020).

⁷ See Lance Eliot, *Tesla Lawsuit over Autopilot-Engaged Pedestrian Death Could Disrupt Automated Driving Progress*, FORBES (May 16, 2020, 11:31 AM), <https://www.forbes.com/sites/lanceeliot/2020/05/16/lawsuit-against-tesla-for-autopilot-engaged-pedestrian-death-could-disrupt-full-self-driving-progress/?sh=2dedfde571f4> (noting the 2018 lawsuit against Tesla involving a Tesla vehicle on autopilot hitting a pedestrian).

⁸ See Andrew J. Hawkins, *California is “Revisiting” Tesla’s Full Self-Driving Beta in Light of “Dangerous” Videos*, THE VERGE (Jan. 12, 2022, 1:42 PM), <https://www.theverge.com/2022/1/12/22880305/tesla-fsd-beta-california-dmv-autonomous-vehicle-letter> (noting the California Department of Motor Vehicles’ decision to revisit regulation).

⁹ See Jack Boeglin, Note, *The Costs of Self-Driving Cars: Reconciling Freedom and Privacy with Tort Liability in Autonomous Vehicle Regulation*, 17 YALE J.L. & TECH. 171, 173, 176 (2015) (indicating that the proliferation of AVs and that their regulation creates issues in the realms of freedom, privacy, and liability).

¹⁰ See Callie A. Kanthack, Note, *Autonomous Vehicles and Driving Under the Influence: Examining the Ambiguity Surrounding Modern Laws Applied to Future Technology*, 53 CREIGHTON L. REV. 397, 398 (2020) (“[U]nder current laws, whether an intoxicated person operating an autonomous vehicle is guilty of DUI remains ambiguous.”).

¹¹ See O.C.G.A. § 40-8-11(a) (2022) (indicating that a “person may operate a fully autonomous vehicle with the automated driving system engaged without a human driver being present in the vehicle” if certain requirements are met).

they do so at all? Does the level of the AV's autonomy matter? Given the increasing street presence of these vehicles,¹² cases are bound to arise in Georgia courts as the use of AVs grows. Georgia courts will soon need to answer these questions.

Whether AV operators are subject to DUI liability in Georgia hinges on whether these operators are in “actual physical control” of their AVs.¹³ The other elements of the DUI statute—intoxication and the vehicle being in motion¹⁴—are not affected by whether the vehicle is driven by a driver or program; whether a car is an AV or a regular car, it can still move, and whether one is a driver behind the wheel or an operator of an AV, they are still capable of being intoxicated. So the only element that one could argue cannot be met by an AV operator is “actual physical control,” because one may argue the limited control they have over the AV may not rise to the level of actual physical control.

No Georgia court has directly addressed whether AV operators are in actual physical control of their AVs, leaving the issue of DUI liability for AV operators a novel question of law in Georgia. This Note argues that under current Georgia law, an intoxicated operator¹⁵ of an AV is susceptible to DUI liability and a Georgia court should hold as such when an AV DUI case arises because an AV operator would have actual physical control over the vehicle. Part II explains the background of AVs generally, the statutory treatment of AVs in Georgia, and a summary of Georgia DUI law. Part III demonstrates how Georgia's statutory provisions relating to DUI and AVs indicate that AV operators should be treated as analogous to drivers who are subject to DUI liability. Part IV examines how Georgia case law interpreting the DUI provisions supports that these laws apply equally to AV operators regardless of the level of autonomy they have, using the Waymo vehicles as a test case.

¹² See *supra* notes 1–9 and accompanying text.

¹³ O.C.G.A. § 40-6-391(a) (2022).

¹⁴ *Id.* (providing that “[a] person shall not drive or be in actual physical control of any moving vehicle” while intoxicated).

¹⁵ See O.C.G.A. § 40-1-1(38) (2022) (“[O]perator’ means any person who drives or is in actual physical control of a motor vehicle or who causes a fully autonomous vehicle to move or travel with the automated driving system engaged.”)

Finally, Part V concludes by arguing that because AVs operators are subject to DUI liability under current law, legislators who wish to limit DUI liability for AV operators must explicitly state as much in new legislation.

II. BACKGROUND

A. AUTONOMOUS VEHICLES GENERALLY

1. *Types of Autonomous Vehicles.* There are six automation levels that can characterize AVs according to the Society of Automotive Engineers, ranging from level 0 automation to level 5 automation.¹⁶ The levels of automation are significant for this analysis because different levels of autonomy require different levels of input or monitoring from the operator. In the hands of an intoxicated driver, a car with more autonomy is more dangerous than an AV with a lower level of autonomy. Level 0 automation is the traditional car; level 0 vehicles have no autonomy or, at most, “momentary driving assistance” in which the car may offer warnings or automatic emergency breaking, but “the driver [is] responsible for driving the vehicle” and “[a]ll vehicle features are assistive and do not operate the vehicle.”¹⁷ Level 1 automation is described as the “[d]river [a]ssistance” level.¹⁸ At this level, the vehicle is primarily controlled by the driver but may include some features which assist the driver.¹⁹ This is the first category that may be characterized as some form of an AV, and examples include vehicles with cruise control

¹⁶ See *Taxonomy and Definitions for Terms Related to Driving Automation Systems for On-Road Motor Vehicles*, SOC’Y AUTO. ENG’RS (Apr. 30, 2021), https://www.sae.org/standards/content/j3016_202104/ (describing the levels as “Level 0: No Driving Automation”; “Level 1: Driver Assistance”; “Level 2: Partial Driving Automation”; “Level 3: Conditional Driving Automation”; “Level 4: High Driving Automation”; “Level 5: Full Driving Automation”).

¹⁷ *Automated Vehicles for Safety*, NAT’L HIGHWAY TRAFFIC SAFETY ADMIN., <https://www.nhtsa.gov/technology-innovation/automated-vehicles-safety#issue-road-selfdriving> (last visited Apr. 29, 2023).

¹⁸ *Id.*

¹⁹ See *id.* (examples include “continuous assistance with either acceleration/breaking OR steering” like “adaptive cruise control”).

technology.²⁰ Level 2 is partial automation that requires the driver to engage with the driving task and monitor their environment at all times, but the AV has certain automated functions such as both “steering and braking/acceleration.”²¹ An example would be a vehicle with some minimal autopilot capabilities, such as the ability to increase or decrease speed on its own.²² Level 3 is conditional automation in which the “system drives, [but a driver] must be available to take over upon request.”²³ “If the system can no longer operate and prompts the driver, the driver must be available to resume all aspects of the driving task.”²⁴ Cars at this level would include vehicles with more advanced autopilot that can steer within lanes and adjust speed on their own but that return control to a driver if they encounter a situation the vehicle’s system cannot understand and react to.²⁵ Level 4 is a high automation AV which can execute all driving functions “within limited service areas” and conditions, but not “universally[;]” the driver may have the option to assume control.²⁶ Finally, level 5 vehicles can perform all driving functions “under all conditions and on all roadways.”²⁷ Because Waymo vehicles can carry passengers without human drivers in any portion of Phoenix where Waymo operates, they are the first example of level 4 AVs.²⁸ No level 5 AVs yet exist.²⁹

²⁰ See Leesa Guarnotta, Comment, *Death of the DUI: Should Autonomous Vehicles Be Considered Synonymous to Designated Drivers Under Georgia Law?*, 70 MERCER L. REV. 1113, 1117 (2019) (“[L]evel one . . . would include automatic vehicles with basic cruise control functions.”).

²¹ *Automated Vehicles for Safety*, *supra*, note 17.

²² See Guarnotta, *supra*, note 20, at 1118 (describing “a vehicle [with] autopilot that could increase and decrease in speed on its own” as an example of a level 2 AV).

²³ *Automated Vehicles for Safety*, *supra*, note 17.

²⁴ *Id.*

²⁵ See Guarnotta, *supra*, note 20, at 1118 (describing the capabilities of level 3 automation as “conditional automation”).

²⁶ *Automated Vehicles for Safety*, *supra*, note 17.

²⁷ See *id.*

²⁸ See Jessica Shea Choksey & Christian Wardlaw, *Levels of Autonomous Driving, Explained*, J.D. POWER (May 05, 2021), <https://www.jdpower.com/cars/shopping-guides/levels-of-autonomous-driving-explained> (stating that “[l]evel 4 driving automation technology is for use in driverless taxis and public transportation services” like Waymo).

²⁹ See *supra* notes 1–5 and accompanying text.

B. AUTONOMOUS VEHICLES AND DUI IN GEORGIA

1. *Georgia AV Law.* Georgia has a statutory scheme authorizing and regulating AVs. In Georgia, a person can “operate a fully autonomous vehicle with the automated driving system engaged without a human driver being present in the vehicle” if certain other statutory conditions are met.³⁰

To understand these conditions, one must first understand certain statutory definitions pertaining to AVs in the Georgia Code. Georgia law refers to AVs as “[f]ully autonomous vehicle[s,]” defined as:

[A] motor vehicle equipped with an automated driving system that has the capability to perform all aspects of the dynamic driving task without a human driver within a limited or unlimited operational design domain and will not at any time request that a driver assume any portion of the dynamic driving task when the automated driving system is operating within its operational design domain.³¹

This definition refers to several other statutorily defined terms. “‘Motor vehicle’ means every vehicle which is self-propelled other than an electric assisted bicycle or an electric personal assistive mobility device (EPAMD).”³² “‘Automated driving system’ means the hardware and software that are collectively capable of performing the entire dynamic driving task on a sustained basis, regardless of whether it is limited to a specific operational design domain.”³³ “‘Dynamic driving tasks’ means all of the real-time operational and tactical functions required to operate a vehicle in on-road traffic, excluding the strategic functions such as trip scheduling and selection of destinations and waypoints”³⁴

³⁰ O.C.G.A. § 40-8-11(a) (2022).

³¹ § 40-1-1(17.2).

³² § 40-1-1(33).

³³ § 40-1-1(5.1).

³⁴ § 40-1-1(15.2). Other specific activities included within the dynamic driving tasks are “(A) Lateral vehicle motion control via steering; (B) Longitudinal motion control via acceleration and deceleration; (C) Monitoring the driving environment via object and event

Finally, an “[o]perational design domain” is a “description of the specific operating domains in which an automated driving system is designed to effectively operate, including but not limited to geographic limitations, roadway types, speed range, and environmental conditions such as weather and limited visibility.”³⁵

Statutory requirements for AV operation include that the AV be capable of complying with Georgia hit and run laws when its “automated driving system [is] engaged.”³⁶ AVs must be registered as such³⁷ and must meet certain insurance requirements.³⁸ Additionally, AV occupants must comply with Georgia law on “the use of safety belts and child passenger restraining systems.”³⁹ Further, unless granted an exception under state or federal law, an AV must be “capable of being operated in compliance with Chapter 6 of this title and this chapter and has been, at the time of its manufacture, certified by the manufacturer as being in compliance with applicable federal motor vehicle safety standards.”⁴⁰

Georgia also requires AVs to be capable of achieving a “minimal risk condition in the event of a failure of the automated driving system that renders that system unable to perform the entire dynamic driving task relevant to its intended operational design domain.”⁴¹ A minimal risk condition refers to “a low-risk operating mode in which a fully autonomous vehicle operating without a human driver achieves a reasonably safe state, such as bringing the vehicle to a complete stop, upon experiencing a failure of the vehicle's automated driving system that renders the vehicle unable to perform the entire dynamic driving task.”⁴²

detection, recognition, classification, and response preparation; (D) Object and event response execution; (E) Maneuver planning; and (F) Enhancing conspicuity via lighting, signaling, and gesturing.” *Id.*

³⁵ § 40-1-1(37.1).

³⁶ § 40-6-279.

³⁷ See § 40-8-11(a)(5) (stating that AVs must be “registered in accordance with Code Section 40-2-20 and identified on such registration as a fully autonomous vehicle or lawfully registered outside of this state”).

³⁸ See § 40-8-11(a)(4) (describing the insurance statutes that apply to AVs).

³⁹ § 40-8-11(b).

⁴⁰ § 40-8-11(a)(1).

⁴¹ § 40-8-11(a)(3).

⁴² § 40-1-1(27.1).

2. *Georgia DUI Law.* The elements of DUI in Georgia are that a person be “driv[ing] or be in actual physical control of a[] moving vehicle while” intoxicated.⁴³ There are two types of DUI in Georgia. First, a DUI “less safe” is where someone is under the influence of alcohol or another substance mentioned in the statute “to the extent that it is less safe for the person to drive.”⁴⁴ Second, DUI per se is where someone is necessarily driving under the influence (regardless of whether it is less safe for that person to drive) by virtue of satisfying some specified aspect of the statute, such as when “[t]he person’s alcohol concentration is 0.08 grams or more at any time within three hours after such driving or being in actual physical control from alcohol consumed before such driving or being in actual physical control ended.”⁴⁵ Both forms of DUI are general intent crimes where the requisite mens rea is inferred from a showing that the defendant committed the prohibited conduct.⁴⁶

The key portion of the statute for determining whether DUI liability applies to AV operators is that the statute applies to persons who “drive or [is] in actual physical control of any moving vehicle while” intoxicated.⁴⁷ Georgia courts have found that the car itself must have been moving while the driver is intoxicated to support DUI liability.⁴⁸ Sufficient movement has been found where the vehicle merely “rolled backwards several inches.”⁴⁹

The Georgia courts have also broadly defined what it means to drive or be in actual control of a vehicle. The Georgia Court of Appeals has held that a jury could properly find an intoxicated defendant in actual physical control of a vehicle when that

⁴³ § 40-6-391(a).

⁴⁴ § 40-6-391(a)(1)–(4).

⁴⁵ § 40-6-391(a)(5).

⁴⁶ See *Jones v. State*, 802 S.E.2d 234, 238–39 (Ga. 2017) (“For DUI less safe, which is a general intent crime, intent may be inferred from showing the defendant drove after consuming alcohol to the extent he was a less safe driver. For DUI per se, which is also a general intent crime, intent may be inferred from showing the defendant drove with a blood alcohol concentration (BAC) of 0.08 grams or more.” (citations omitted)).

⁴⁷ O.C.G.A. § 40-6-391(a) (2022).

⁴⁸ See *Carr v. State*, 314 S.E.2d 694, 695 (Ga. Ct. App. 1984) (finding reversible error where a trial court charged a jury that “the term ‘movement’ did not necessarily refer to movement of the vehicle itself but could also refer to ‘acts which engage the machinery of the vehicle, that alone or in sequence will set in motion the motive power of the vehicle’”)

⁴⁹ *Greene v. State*, 448 S.E.2d 758, 758–59 (Ga. Ct. App. 1994).

defendant enters the driver's seat of the car and knocks the car out of gear, causing it to move.⁵⁰ In finding that the defendant could be found in actual physical control of the vehicle, the court noted that "[t]he car moved as a direct result of [defendant]'s actions in releasing the brake, causing the vehicle to shift from 'park,' or otherwise effecting the movement of the parked vehicle."⁵¹ Similarly, the court found that an individual could appropriately be found to be in actual physical control of a vehicle when a defendant was slumped over the wheel of the car while intoxicated, an officer tapped the glass, and the defendant startled and released the brake of the car, causing it to move backwards a few inches because it was the defendant's "own failure to maintain control of a vehicle . . . that caused it to move in the officer's presence, and not a force totally beyond his control."⁵² As such, one can be deemed to be in actual physical control of their vehicle when their actions cause it to move. Similarly, an intoxicated AV operator can be considered to be in actual physical control of their vehicle.

III. GEORGIA'S STATUTORY SCHEME INDICATES DUI LAW APPLIES TO AV OPERATORS

Georgia's statutory scheme concerning AV operation implies that AV operators should be as susceptible to DUI laws as are drivers of ordinary cars. Primary support for this argument can be found in the portion of the Georgia Code which authorizes the operation of AVs. That code section stipulates both that AVs be "capable of being operated in compliance with Chapter 6 of this title"⁵³ and that "fully autonomous vehicles, automated driving systems, and any commercial use or operation of fully autonomous vehicles shall be governed by . . . Chapter 6 of this title, and this chapter notwithstanding any other provision of law to the contrary."⁵⁴ Because the Georgia DUI law is within Chapter 6 of the same title,⁵⁵

⁵⁰ *Savage v. State*, 556 S.E.2d 176, 180 (Ga. Ct. App. 2001).

⁵¹ *Id.*

⁵² *Greene*, 448 S.E.2d at 758–59.

⁵³ O.C.G.A. § 40-8-11(a)(1) (2022).

⁵⁴ § 40-8-11(c).

⁵⁵ *See supra* note 43 and accompanying text.

this statutory provision clearly indicates that AVs are equally subject to Georgia's DUI laws as regular vehicles.

Additionally, Georgia defines an operator as “any person who drives or is in actual physical control of a motor vehicle or who causes a fully autonomous vehicle to move or travel with the automated driving system engaged.”⁵⁶ As previously indicated, DUI law applies in Georgia to one who drives or is in actual physical control of a moving vehicle while intoxicated.⁵⁷ This provision treats one who drives a vehicle, one who has actual physical control, and one who causes an AV to move as all equally constituting an operator. This implies that they should be treated interchangeably. As such, because drivers and those in actual physical control of a vehicle are subject to DUI liability when intoxicated,⁵⁸ those who engage or cause to move an AV should be as well.

Together, Georgia's DUI and AV statutes imply that AV operators should be treated as analogous to the drivers of typical cars and thus subject them to DUI liability on equal terms. The clearest evidence of this can be found in the statutory section directed at AVs.⁵⁹ The provision states that a “person may operate a fully autonomous vehicle with the automated driving system engaged without a human driver being present in the vehicle, provided that such vehicle” can be operated “in compliance with Chapter 6 of this title[.]”⁶⁰ The section further emphasizes that “fully autonomous vehicles . . . shall be governed by . . . Chapter 6 of this title . . . notwithstanding any other provision of law to the contrary” unless otherwise provided in that code section.⁶¹ Given that Chapter 6 includes Georgia's DUI statute,⁶² the statutory section addressing AV legality clearly only authorizes AV use that complies with the state's DUI law. In the absence of statutory language to the contrary, Georgia's legislature intended for DUI liability to apply to AV operators. While there is room for alternative

⁵⁶ O.C.G.A. § 40-1-1(38) (2022).

⁵⁷ See *supra* note 43 and accompanying text.

⁵⁸ See *supra* note 43 and accompanying text.

⁵⁹ See O.C.G.A. § 40-8-11 (2022) (describing the conditions for the authorization to operate AVs in Georgia).

⁶⁰ § 40-8-11(a)(1).

⁶¹ § 40-8-11(c).

⁶² See § 40-6-391 (describing DUI liability under Georgia law).

readings, the trend of the statutory text supports that AV operators should be subject to DUI law.

But O.C.G.A. § 40-8-11's subsection of AVs to Chapter 6 that includes DUI law is not the only statutory provision supporting this conclusion. Other statutory provisions require the operators of AVs to perform certain obligations typically performed by traditional drivers of non-autonomous vehicles,⁶³ implying that the Georgia Code intends to treat AV operators and traditional drivers similarly. For example, a person may only operate an autonomous vehicle if the vehicle "[h]as the capability to meet the requirements of" O.C.G.A. § 40-6-279 specifically.⁶⁴ That provision indicates that the "requirements of subsection (a) of Code Sections 40-6-270, 40-6-271, 40-6-272, 40-6-273, and 40-6-273.1 shall be deemed satisfied" if an AV can remain at the scene of an accident and if it or its operator calls and informs law enforcement of any statutorily required information about the accident.⁶⁵ In other words, an AV operator involved in an accident bears the same responsibility as a traditional driver in an accident.⁶⁶ As such, the Georgia Code clearly imposes the same obligations on AV operators as drivers of typical vehicles, especially regarding safety. As drunk driving also poses a safety threat, it is clear that AV operators must comply with Georgia DUI laws just as they are required to comply with Georgia accident notification laws.

Similarly, occupants of AVs must "comply with the requirements of Code Sections 40-8-76 and 40-8-76.1 regarding the use of safety belts and child passenger restraining systems."⁶⁷ One of these

⁶³ See § 40-8-11(b) (requiring AV occupants to comply with Georgia seatbelt provisions that impose obligations on drivers); § 40-8-11(a)(2) (requiring AVs or their operators be capable of remaining on the scene of an accident and contacting law enforcement as drivers are required to do by other statutory provisions).

⁶⁴ § 40-8-11(a)(2).

⁶⁵ § 40-6-279.

⁶⁶ See, e.g., § 40-6-270 (articulating the duty to stop when a driver is involved in an accident involving personal injury, death, or vehicle damage); § 40-6-271 (describing the duty of a driver who strikes an unattended vehicle); § 40-6-272 (defining the duty of a driver who strikes highway fixtures); § 40-6-273 (describing a driver's duty to make immediate reports of certain accidents); § 40-6-273.1 (describing an officer's duty at a reported accident to instruct drivers to provide certain information to other parties suffering injury or damage from the accident).

⁶⁷ § 40-8-11(b).

sections requires that “[e]very driver who transports a child under eight years of age in a passenger” vehicle “shall, while such motor vehicle is in motion and operated on a public road . . . provide for the proper restraint of such child.”⁶⁸ This is another example of the Georgia legislature imposing on AV operators and occupants responsibilities also imposed on drivers under the law in areas pertaining to vehicular safety. As such, this provides further support that DUI provisions, another area of vehicular safety, should also apply to AV operators to fulfill the same policy goals of Georgia’s statutory scheme.

One may argue to the contrary that some statutory provisions imply an AV operator should not be considered analogous to a driver or one in actual physical control of a vehicle. For example, “[a] fully autonomous vehicle with the automated driving system engaged or the operator of a fully autonomous vehicle with the automated driving system engaged” are considered to be “persons” exempt from the requirement to have a Georgia driver’s license.⁶⁹ One may thus argue that because AV operators are not required to have a driver’s license, they cannot be considered analogous to a driver who is subject to DUI liability.

However, this argument misses important aspects of the statutory section on licensing exemptions. This section also provides that nonresidents who have in their immediate possession a valid license from another state are exempt from the Georgia licensing requirements.⁷⁰ But even though these nonresident drivers are exempt from licensing requirements like AV operators are, they are still plainly subject to DUI liability in Georgia.⁷¹ As such, merely exempting AV operators from Georgia licensing requirements does not establish that they should not be treated as analogous to drivers for DUI liability purposes.

⁶⁸ § 40-8-76(b)(1) (providing exceptions for certain statutorily defined public transit or taxicab vehicles).

⁶⁹ See § 40-5-21(a)(13) (describing those persons who are exempt from Georgia’s driver licensing requirements, including AV operators).

⁷⁰ See § 40-5-21(a)(2) (“A nonresident who has in his or her immediate possession a valid driver’s license issued to him or her in his or her home state, country, or political subdivision of a foreign country . . .”).

⁷¹ See *Dep’t of Pub. Safety v. Bafford*, 478 S.E.2d 444, 444–45 (Ga. Ct. App. 1996) (finding that an Illinois resident convicted of DUI in Georgia could have his Georgia driving privileges suspended).

One may also argue that the Georgia Code's use of the word operator implies AV operators should be considered distinct from drivers or those in actual physical control of a vehicle, but this argument also fails upon closer inspection of the statute. Throughout the Georgia Code, those who use an AV are typically referred to as "operating" the AV rather than "driving" the AV.⁷² One may thus argue that because the DUI statute explicitly states that "driv[ing]" and exercising "actual physical control"⁷³ or a moving vehicle while intoxicated is prohibited, perhaps the legislature did not mean to subject one who merely "operates" a vehicle to DUI liability. But this neglects that Georgia Code's definition of operator includes "any person who drives or is in actual physical control of a motor vehicle or who causes a fully autonomous vehicle to move or travel with the automated driving system engaged."⁷⁴ Thus, the statutory definitions equates operators with drivers and those in actual physical control of a vehicle. Such a reading is further supported by the fact that operators of AVs are subject to many other responsibilities typically imposed on drivers of vehicles.⁷⁵ As such, this definition should not be read to imply that those who operate AVs are not subject to the obligations imposed on drivers of those in actual physical control of vehicles like the obligation to not drive while intoxicated.

IV. GEORGIA CASE LAW SUPPORTS HOLDING AV OPERATORS TO THE SAME DUI STANDARDS AS DRIVERS

The scant Georgia case law interpreting Georgia's DUI provisions and the reasoning underlying recent decisions support that AV operators should be subject to DUI liability like regular drivers.

In *Savage v. State*,⁷⁶ the defendant's DUI conviction was affirmed after an appeal in which he argued that he was not driving or in actual physical control of his vehicle.⁷⁷ The defendant was convicted

⁷² See, e.g., O.C.G.A. § 40-8-11(a) (2022) (defining the use of an AV as operating it).

⁷³ O.C.G.A. § 40-6-391(a).

⁷⁴ O.C.G.A. § 40-1-1(38).

⁷⁵ See *supra* notes 53–68 and accompanying text.

⁷⁶ 556 S.E.2d 176 (Ga. Ct. App. 2001).

⁷⁷ *Id.* at 178–79.

of DUI after breaking into his car with a coat hanger when, while the door was still open, the car rolled approximately fifteen feet and struck another parked vehicle.⁷⁸ No one else was in the car and then engine was not running.⁷⁹ On appeal, the defendant argued that he was not in actual physical control of the vehicle because, even though he “voluntarily placed himself behind the wheel of his car,” he “did not have the keys and the motor was not running” and was thus “unable to steer the car.”⁸⁰ He noted that he could not recall why the car moved, “but speculated that he knocked the car out of gear.”⁸¹

Through reasoning pertinent to the question of whether AV operators would incur criminal DUI liability, the court affirmed the conviction.⁸² The court noted that the defendant admitted “no one else was in the car, [and] that he caused the car to move.”⁸³ The court also noted the defendant’s admission that he was steering the car, but ultimately stated that, taking into account Savage’s contrary argument on appeal that he did not steer the car because he did not have the keys, “[defendant]’s argument that he was unable to steer the car because he had no keys is without merit.”⁸⁴ As such, whether the defendant steered the car was not a significant factor in the court’s decision.

In reaching its decision, the court held that the defendant was in actual physical control of his vehicle because “[defendant] voluntarily placed himself behind the wheel of his car by breaking into it with a coat hanger and then caused it to roll downhill in the parking lot and collide with a van while he was under the influence of drugs.”⁸⁵ Regarding causation, the court explains that “[t]he car moved as a direct result of [defendant]’s actions in releasing the brake, causing the vehicle to shift from ‘park,’ or otherwise effecting the movement of the parked vehicle.”⁸⁶

⁷⁸ See *id.* at 179 (recounting a witness’ observations of the events in question).

⁷⁹ See *id.* (discussing how the witness did not see anyone else in the car and that he did not hear the engine running).

⁸⁰ *Id.* at 180.

⁸¹ *Id.*

⁸² See *id.* at 183 (affirming the judgement of the lower court).

⁸³ *Id.* at 180.

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

The *Savage* court's reasoning can be synthesized into a two-pronged test for actual physical control. First, one must voluntarily put themselves in a position where they can exercise some control over the vehicle. For example, like how the *Savage* defendant voluntarily put himself behind his car's steering wheel where he could exercise some minimal level of control over the vehicle even if he argued he could not fully steer without the keys and without starting the vehicle.⁸⁷ Second, the movement of the vehicle must have directly resulted from one's actions, like how the *Savage* defendant's car only rolled due to his actions in releasing the brake.⁸⁸

In articulating the reasoning behind this test, the court draws on prior precedent that is instructive. The court cites *Greene v. State*⁸⁹ as key precedent supporting their decision.⁹⁰ The court explains the key finding of the *Greene* decision to be that "the defendant [was] in actual physical control of a moving vehicle when, passed out at the wheel of his truck (which was idling and in reverse gear), the defendant was startled into consciousness by an officer, causing the truck to roll backward several inches."⁹¹ The *Savage* court explained that the *Greene* court "held: 'It was Greene's own failure to maintain control of a vehicle that was running and in gear that caused it to move in the officer's presence, and not a force totally beyond his control.'"⁹² But in *Harris v. State*,⁹³ the court also found an "intoxicated defendant to be in actual physical control of his disabled vehicle when, after he was pushed into the street by another car, he steered his vehicle a short distance, even though his vehicle was unable to move under its own power."⁹⁴ As such, "[i]t is not necessary that the engine be running in order to constitute a violation" of Georgia's DUI statute.⁹⁵ So the relevant aspect of the quoted *Greene* holding that informed the *Savage* test was that the defendant failed to maintain control of a vehicle whose motion was

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ 448 S.E.2d 758 (Ga. Ct. App. 1994).

⁹⁰ *Savage*, 556 S.E.2d at 180 (citing *Greene v. State*, 448 S.E.2d 758 (Ga. Ct. App. 1994)).

⁹¹ *Id.*

⁹² *Id.* (quoting *Greene* 448 S.E.2d at 759).

⁹³ *Harris v. State*, 103 S.E.2d 443 (Ga. Ct. App. 1958).

⁹⁴ *Savage*, 556 S.E.2d at 180 (citing *Harris v. State*, 103 S.E.2d 443 (Ga. Ct. App. 1958)).

⁹⁵ *Id.*

caused by the defendant and not a force totally outside the defendant's control.

Prior decisions had suggested that *Greene's* holding was more limited than the *Savage* court suggests, but such decisions were sharply divided and put to rest by *Savage*. The court in *Virgil v. State*⁹⁶ indicated that *Greene's* holding⁹⁷ only addressed the requirement of the Georgia DUI statute that the car be in motion and not the actual physical control requirement.⁹⁸ But the *Virgil* court's decision was divided, with one judge concurring specially and another only joined portions of the judgement.⁹⁹

Additionally, any argument that the *Greene* holding did not apply to the actual physical control element was laid to rest by *Savage*. In *Savage*, the court characterized *Virgil's* holding:

In *Virgil*, the trial court improperly instructed the jury that it was irrelevant whether the defendant intended to move the vehicle as long as the vehicle moved as a result of her actions That charge had the effect of eliminating the jury's consideration of the accused's defense that she was not driving or in actual control of the car Here, this defective instruction was not given. On the contrary, the trial court instructed the jury at length concerning the criminal intent required to find *Savage* guilty of the crimes charged as well as the need to find that *Savage* was in actual control of the car. The trial court did not erroneously charge the jury concerning the elements of DUI.¹⁰⁰

Further, the *Savage* court repudiated *Virgil's* reading of *Greene* to speak only to the element of movement and not of actual physical control, stating:

⁹⁶ 488 S.E.2d 694, 697–98 (Ga. Ct. App. 1997).

⁹⁷ See *supra* note 92 and accompanying text.

⁹⁸ See *id.* (“The facts in the present case are not remotely similar to the facts in *Greene* The central issue in the present case was not the movement of the car, but whether, taking *Virgil's* version of the incident as true, she was driving or in actual physical control of the moving car after she fell headfirst onto the floorboard.”)

⁹⁹ See *id.* at 698–99 (indicating that Beasley, J., concurred specially and McMurray, P.J., concurred only in divisions 1 and 2 of the judgement).

¹⁰⁰ *Savage*, 556 S.E.2d at 181–82 (citations omitted).

[I]n *Greene v. State*, we found the defendant to be in actual physical control of a moving vehicle when, passed out at the wheel of his truck (which was idling and in reverse gear), the defendant was startled into consciousness by an officer, causing the truck to roll backward several inches. We held: “It was Greene's own failure to maintain control of a vehicle that was running and in gear that caused it to move in the officer's presence, and not a force totally beyond his control.”¹⁰¹

In this passage, the court explicitly states that *Greene*'s holding is also relevant to the actual physical control element. Additionally, the *Savage* decision was reached in 2001,¹⁰² while the *Virgil* decision was reached in 1997.¹⁰³ As the *Savage* decision is more current, this supports prioritizing its view of the precedential value of *Greene* above anything in the *Virgil* opinion which seems to the contrary.

Another relevant precedent case is *Bridgers v. State*.¹⁰⁴ There, the court found evidence that the defendant was exercising actual physical control over his vehicle sufficient to support a DUI conviction where the defendant's car “was being towed via a six to eight-foot-long steel cable attached to another vehicle. Certain wheels on the vehicle in which defendant was traveling were moving and others were locked. Defendant was steering the vehicle to keep it within the lanes of traffic.”¹⁰⁵ In so doing, the court held that “defendant was in control of the vehicle because it was necessary for him to steer the vehicle to keep it within the traffic lane,” even though he did not have total control over the vehicle.¹⁰⁶ As such, it appears that as long as a defendant exercises some necessary control over the vehicle and its movement, that is sufficient for actual physical control under the statute, even if the defendant is not totally in control over the vehicle.

¹⁰¹ *Savage*, 556 S.E.2d at 180 (citations omitted).

¹⁰² *Id.* at 176.

¹⁰³ *Virgil v. State*, 488 S.E.2d 694, 694 (Ga. Ct. App. 1997).

¹⁰⁴ 444 S.E.2d 330 (Ga. Ct. App. 1994).

¹⁰⁵ *Id.* at 331.

¹⁰⁶ *Id.*

To recap, the *Savage* test holds that a defendant is in actual physical control of a vehicle when two prongs are met: one must voluntarily put themselves in a position to exercise some control over the vehicle¹⁰⁷ and the movement of the vehicle must have been effected as a direct result of one's actions.¹⁰⁸ Also relevant is whether a defendant's own acts or omissions are what caused the movement of the vehicle rather than a force totally outside the defendant's control.¹⁰⁹ Additionally, one need not have total control over all driving functions of the vehicle to have actual physical control sufficient for DUI liability so long as it is necessary for the defendant to exercise some control over the vehicle and its movement.¹¹⁰

Applying this *Savage* test to an intoxicated operator of an AV, an operator would likely be found in actual physical control of the AV and subject to DUI liability. In applying this test, one must first explore whether actual physical control is established at each level of AV autonomy.¹¹¹ Recall that there are six levels of autonomy an AV may have, ranging from level 0 to level 5, with increasing autonomy of the vehicle as one moves up the levels.¹¹²

For levels 0 through 3, the *Savage* test is clearly met—such AVs easily constitute vehicles over which operators have actual physical control sufficient for DUI liability. At each of these levels, the operator must monitor their environment at all times and may be called on to take control of the vehicle back from the automated system at any second. As a result, the operator exercises significant control over the vehicle's movement and there is actual physical control.

The more questionable levels of automation, where the operator's control must be closely scrutinized under the *Savage* test, are levels 4–5. Level 4 is a high automation AV which can execute all driving functions within certain conditions, yet the driver may have the option to assume control.¹¹³ These vehicles require a human

¹⁰⁷ See *supra* note 87 and accompanying text.

¹⁰⁸ See *supra* note 88 and accompanying text.

¹⁰⁹ See *supra* notes 95–101 and accompanying text.

¹¹⁰ See *supra* notes 104–106 and accompanying text.

¹¹¹ See *supra* notes 17–29 and accompanying text.

¹¹² See *supra* notes 17–29 and accompanying text.

¹¹³ *Automated Vehicles for Safety*, *supra* note 17.

operator in the vehicle who need not monitor conditions or drive in the conditions in which the car can fully drive, but who must take control if the vehicle encounters a situation outside of the conditions in which it can execute all driving functions.¹¹⁴

Finally, level 5 vehicles can perform all driving functions in all possible conditions; it may have the option to give control to a driver in the car, but need not have a driver.¹¹⁵ The Waymo vehicles in Phoenix most closely meet the definition of level 4 AVs because they operate without human drivers in all conditions in the Phoenix suburbs.¹¹⁶ The Waymo vehicles are presently the most technologically sophisticated AVs on the road anywhere.¹¹⁷

As such, this portion of the Note will examine if the Waymo vehicles and their operators in Phoenix satisfy the *Savage* test for actual physical control. If so, this strongly supports the assertion that all existing AVs and their operators meet all the elements for DUI if their operators are intoxicated. If these vehicles meet the *Savage* test, then any other AVs should too.

To apply the test to Waymo AVs, it is beneficial to review how these vehicles operate. “In the suburbs of Phoenix, anyone can now ride in [Waymo] minivan[s] with no driver behind the wheel.”¹¹⁸ As such, these AVs operate fully autonomously in all conditions with no human driver, with “Waymo support[ing] its autonomous vehicles with remote technicians and roadside assistance crews who can help get cars out of a tight spot, either via the internet or in person.”¹¹⁹ Individuals who serve as remote technicians or roadside crews are called “Rider Support agent[s]” and can be contacted at

¹¹⁴ See *id.* (explaining that a level 4 vehicle can perform all “driving tasks within limited service areas”).

¹¹⁵ See *id.* (“When engaged, the system handles all driving tasks . . . [and] can operate the vehicle universally—under all conditions and on all roadways.”).

¹¹⁶ See *supra* notes 1–5 and accompanying text. Because the Phoenix suburbs have conditions particularly well-suited to AV operation, it is possible that they could not operate in other areas and therefore cannot be considered level 5 AVs. see also Rani Molla, *Self-Driving Cars: The 21st-Century Trolley Problem*, VOX (Oct. 6, 2021, 7:00 AM), <https://www.vox.com/recode/22700022/self-driving-autonomous-cars-trolley-problem-waymo-google-tesla> (“Waymo vehicles are level 4, meaning the car can drive itself under limited geographic conditions and doesn’t need driver supervision.”).

¹¹⁷ See *supra* notes 1–5 and accompanying text.

¹¹⁸ Metz, *supra* note 1.

¹¹⁹ *Id.*

any time while riding in a fully autonomous vehicle by pressing a button in the vehicle.¹²⁰ Any level 4 or 5 AV will likely need individuals like these agents because, in the current stage of technological sophistication, even the most advanced self-driving automated system will not be able to deal with every conceivable driving situation. In sum, even if there is not a human driver in the vehicle, there is always a need for a human on standby.¹²¹

It is these agents who should be considered the operators of the Waymo AVs. These agents are responsible for the car that contacts them for support.¹²² Therefore, since the company causes the AV to move with its automated driving system engaged, and the agent represents the company with regard to specific vehicles, the agent can be seen as the operator of that vehicle. The company's causation of the movement of the AV should be attributed to the agent as the company's representative for that vehicle because that agent is still in actual physical control of the vehicle, and anyone who is in actual physical control of an AV is an operator of the AV under Georgia law.¹²³

These agents of Waymo vehicles are in actual physical control of the Waymo AVs under the *Savage* test and should therefore face DUI liability if they operate the AV in movement while intoxicated. By choosing to serve as agents who may be called on to operate the vehicle remotely or as part of a roadside technician crew if the AV encounters an issue, the agents are voluntarily putting themselves in a position where they can exercise some control over the vehicle, as they may be called on to take over and can then drive the vehicle remotely. Should they take control (or fail to take control when asked to) while intoxicated, their actions will directly affect the movement of the vehicle. When circumstances require that they take control, they will be moving the vehicle while intoxicated, thereby affecting its motion as a direct result of their actions. It will be the agent's acts that cause a change in the movement of the vehicle to move in some way and not a force totally outside the agent's control. While this is not total control of the vehicle, a

¹²⁰ *Waymo One*, WAYMO, <https://waymo.com/waymo-one/> (last visited Apr. 14, 2023).

¹²¹ See Metz, *supra* note 1 (quoting a former lawyer who notes that, even when vehicles are totally autonomous, "you still need a human in the loop").

¹²² See *supra* notes 119–120 and accompanying text.

¹²³ See *supra* notes 119–120 and accompanying text.

minimal level of control over the vehicle and its movement sufficiently establishes actual physical control under Georgia law.¹²⁴ Thus, all aspects of the *Savage* test are met by Waymo agents—if these agents are intoxicated and asked to take control of the vehicle, they will be in actual physical control of a moving vehicle while intoxicated and should thereby be subject to DUI liability.

Some have argued that the Georgia DUI laws would not be apply to some AV operators.¹²⁵ Such arguments rest on a particular reading of *Carr v. State*.¹²⁶ These arguments assert that the *Carr* decision stood for the proposition that mere operation of a vehicle is not sufficient to establish actual physical control.¹²⁷ But this reads *Carr* too broadly. *Carr* merely holds that a vehicle must be in motion to satisfy all elements of the Georgia DUI statute.¹²⁸

In *Carr*, a DUI defendant's conviction was reversed because the trial court "erred . . . in charging the jury that the defendant could be convicted for merely being in physical control of the vehicle, without regard to whether it was moving."¹²⁹ The court stated that this charge was based on judicial interpretations of the former Georgia DUI statute that made it "unlawful for any person under the influence of alcohol to operate any vehicle, without regard to whether it was moving."¹³⁰ In contrast, the current Georgia DUI statute at issue in *Carr* proscribed "driving or being 'in actual physical control of any moving vehicle' while under the influence of alcohol or drugs," necessitating a reversal of the defendant's conviction based on a jury charge that misstated the law by indicating that the defendant could be convicted without regard to whether the vehicle was in motion.¹³¹

¹²⁴ See *supra* notes 87–107 and accompanying text.

¹²⁵ See, e.g., Guarnotta, *supra*, note 20, at 1126–27 (arguing that "it is highly unlikely that an occupant in an autonomous vehicle could be considered to be 'driving' or having 'actual physical control[]'" of the vehicle under Georgia DUI law).

¹²⁶ 314 S.E.2d 694 (Ga. Ct. App. 1984).

¹²⁷ See Guarnotta, *supra* note 20, at 1126 (arguing that the court indicated more than operation of a vehicle is necessary for actual physical control).

¹²⁸ See *Carr*, 314 S.E.2d at 695 (describing how Georgia's DUI law formerly only required operation while intoxicated without regard to whether the vehicle was in motion, but now requires that one drive or be in actual physical control of a moving vehicle while intoxicated).

¹²⁹ *Id.*

¹³⁰ *Id.* (citing O.C.G.A. § 40-6-391(a) (2022)).

¹³¹ *Id.* (quoting § 40-6-391(a)).

The *Carr* decision turned on the fact that the jury was instructed that mere operation without movement of the car could support DUI liability.¹³² This is plainly distinct from a holding that operation is not sufficient control to establish actual physical control. The issue in *Carr* was not the actual physical control element of the DUI statute, but rather the movement element of the DUI statute. So *Carr* does not support any argument that the operation of AVs is insufficient control to be actual physical control of a vehicle which can be subject to DUI liability.

Regardless, *Savage*'s more recent decision supports that AV operators could face DUI liability.¹³³ AV operators should be subject to DUI liability for exercising actual physical control over their vehicles under Georgia case law's interpretation of that element.¹³⁴

V. CONCLUSION

As demonstrated, under current Georgia law, an AV operator who operates their AV while intoxicated should be subject to DUI liability. This is suggested by both the statutory sections of Georgia's code addressing AVs¹³⁵ and the Georgia case law interpreting Georgia's DUI statute.¹³⁶ As these vehicles are already on the streets,¹³⁷ constitute a growing industry,¹³⁸ and are authorized for use in Georgia,¹³⁹ they will only see increased use over time. Georgia courts will inevitably have to address this novel question of state law and should answer that criminal DUI liability applies to intoxicated AV operators.

Notably, a legislator who sponsored the bill that authorized AVs on Georgia roads stated that doing so was going to "reduce DUIs."¹⁴⁰

¹³² *Id.*

¹³³ *Savage* was issued in 2001 while *Carr* was issued in 1984. *See supra* notes 102–103 and accompanying text.

¹³⁴ This assumes the other elements of DUI are met. *See supra* notes section II.B.2.

¹³⁵ *See supra* Part III.

¹³⁶ *See supra* Part IV.

¹³⁷ *See supra* Part I.

¹³⁸ *See supra* Parts I–II.

¹³⁹ *See supra* Part III.

¹⁴⁰ Fiza Pirani, *Georgia Officially OKs Self-Driving Cars on Public Roads*, ATLANTA J.-CONST. (May 11, 2017), <https://www.ajc.com/news/local/georgia-officially-oks-self-driving-cars-public-roads/iMua26lDS8mOsvE2bFv4vM/>.

However, if the legislative intent of the authorization of AVs in Georgia was to reduce DUI liability, this intent was neither realized by the statutes written and adopted on the subject,¹⁴¹ nor will it likely be realized by Georgia courts interpreting these statutes.¹⁴² As such, if Georgia legislators truly want to insulate AV operators from DUI liability, they must amend the current statute or pass a new one to accomplish that goal.

Even considering that the DUI laws will probably be applied to AVs, uncertainty in this area of law remains. Concluding that DUI laws apply to AVs does not answer how those DUI laws will or should apply to AVs. For one, a level 4 AV may have occupants and operators who are distinct persons, so even though DUI laws apply to such AVs, the Georgia legislature may be wise to clarify how DUI laws distinguish between occupants and operators for AV purposes.

Further, there have been instances of the autopilot programs for AVs getting into accidents.¹⁴³ If we cannot trust AVs to be safe on their own, then it may be unwise to trust them to drive people who are intoxicated and could not safely take the wheel themselves. As such, even though Georgia case law and statutory text indicate that DUI laws should be applied to AVs, it is wise for policy purposes to explicitly state as much by passing a statute and to regulate the AV industry even further.

In her Note, Leesa Guarnotta asserts that current Georgia DUI laws do not apply to AVs and that a new statute should be passed to apply DUI law to AVs.¹⁴⁴ While this Note argues that Georgia DUI laws do apply to AVs currently, it agrees that it would be wise to pass a statute clarifying how Georgia law relates to AVs. Guarnotta's proposed statute focuses on applying Georgia's DUI law to AVs and setting different thresholds of intoxication for the different levels of automation for various AVs.¹⁴⁵ This Note's proposed statute would also clarify that Georgia's DUI laws apply to AVs but does not agree that the level of intoxication required to have a DUI should change with the automation level of the AV. If one may be required to take control of the car, one should be sober—

¹⁴¹ See *supra* Part III.

¹⁴² See *supra* Part IV.

¹⁴³ See *supra* note 7 and accompanying text.

¹⁴⁴ See Guarnotta, *supra* note 20, at 1116, 1128.

¹⁴⁵ *Id.* at 1129–30.

the AV automation level only effects the circumstances under which one may have to take control. This Note instead advocate for a clear statutory distinction between an operator and an occupant. In vehicles like the level 4 Waymos, the operator could be a remote technician, while the car may have an occupant who hired the taxi service. As such, the law should be clear in that circumstance who qualifies as the operator who should be liable for DUI if intoxicated while operating the vehicle. In that circumstance, this Note argues that the one who may be tasked with controlling the car—the remote tech—qualifies as the operator who must not be intoxicated., But regardless of how the laws apply to AVs or are modified to do so, it is clear that Georgia’s current DUI statutes likely already apply to AVs such that driverless cars are not designated drivers.